

NO. 44,365-B

THE STATE OF TEXAS
VS.
ERNEST LOPEZ, II

§ IN THE 181st DISTRICT COURT
§ IN AND FOR
§ POTTER COUNTY, TEXAS

FILED
181st DISTRICT COURT
POTTER COUNTY, TEXAS
Judge
23rd day of April 2003
At 10 o'clock A.M.

CHARGE TO THE JURY ON PUNISHMENT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, ERNEST LOPEZ, II, has been found guilty by you of the offense of Aggravated Sexual Assault of a Child, a first degree felony, as alleged in the indictment.

It now becomes your duty to assess the punishment within the limits prescribed by law.

I.

You are instructed that the punishment for the indicted offense of Aggravated Sexual Assault of a Child is by confinement in the Texas Department of Criminal Justice, Institutional Division, for a term of not more than 99 years or life or less than 5 years and in addition to imprisonment you may assess a fine not to exceed \$10,000.00.

Therefore, you will assess the punishment upon said finding of guilty of not more than 99 years or life or less than 5 years, and in addition to imprisonment you may assess a fine not to exceed \$10,000.00.

II.

The burden of proof in all criminal cases rests upon the State throughout the trial and never shifts to the defendant.

III.

The law provides that a defendant in a criminal action has the right, but is under no compulsion to testify as a witness in his trial, but that if he does not do so, that fact shall not be considered as any circumstance against him; and in this case, you are instructed that you must not consider, discuss, comment upon or refer to the fact that he did not so testify.

IV.

Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he may earn time off the period of incarceration imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the actual time served equals one-half of the sentence imposed or 30 years, whichever is less, without consideration of any good conduct time he may earn. Eligibility for parole does not guarantee that parole will be granted.

It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant.

V.

You are instructed that if there is testimony before you in this case regarding the defendant having committed other acts or participated in other transactions other than the offense alleged against him in the indictment in this case, that you cannot consider such other acts or transaction, if any, unless you first find and believe beyond a reasonable doubt that the defendant committed such acts or participated in such transactions, if any, but if you do not so believe, or if you have a reasonable doubt thereof, you will not consider such testimony for any purpose.

VI.

The defendant has filed his sworn motion for probation herein, alleging that he has never before been convicted of a felony in this State or any other State.

Now if you believe from the evidence that the defendant has never before been

convicted of a felony in this State or any other State, and if you assess the punishment of the defendant at confinement in the Texas Department of Criminal Justice, Institutional Division, for a period of 10 years or less, then you may recommend such community supervision for the defendant. If you recommend community supervision, you may also assess a fine in addition to confinement in the Texas Department of Criminal Justice, Institutional Division. Whether you do or do not recommend community supervision for the defendant is a matter that rests within the sound discretion of the jury.

VII.

You are further instructed that in fixing the defendant's punishment, which you will show in your verdict, you may take into consideration all the facts shown by the evidence admitted before you in the full trial of this case and the law as submitted to you in this charge.

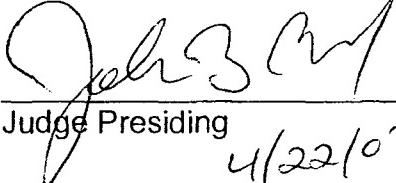
You are not to discuss among yourselves how long the accused would be required to serve the sentence that you impose. Such matters come within the exclusive jurisdiction of the Board of Pardons and Paroles division of the Texas Department of Criminal Justice and the Governor of the State of Texas, and must not be considered by you.

Your verdict must be by a unanimous vote of all members of the jury. In arriving at the amount of punishment to be assessed, it will not be proper for you to fix the same by lot, chance, any system of averages, or any other method than by a full, fair, and free exercise of the opinion of the individual jurors, and you may not refer to nor discuss any matter not in evidence before you.

You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given their testimony, but you are bound to receive the law from the court, which has been given to you.

No one has any authority to communicate with you except the officer who has you in charge. During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence. After you have reached a unanimous verdict, the Presiding Juror will certify thereto by using the appropriate form attached to this charge and signing the same as Presiding Juror.

Following the arguments of counsel, you will retire to deliberate your verdict.



Judge Presiding
4/22/07

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VERDICT FORMS

No. 1 We, the jury, having found the defendant guilty of the indicted offense of Aggravated Sexual Assault of a Child assess his punishment at confinement in the Texas Department of Criminal Justice, Institutional Division, for life.

PRESIDING JUROR

No. 2 We, the jury, having found the defendant guilty of the indicted offense of Aggravated Sexual Assault of a Child assess his punishment at confinement in the Texas Department of Criminal Justice, Institutional Division, for life and assess a fine of \$ _____ in addition to such imprisonment.

PRESIDING JUROR

No. 3 We, the jury, having found the defendant guilty of the indicted offense of Aggravated Sexual Assault of a Child assess his punishment at confinement in the Texas Department of Criminal Justice, Institutional Division, for 60 years.

Knape G. Mathe

PRESIDING JUROR

No. 4 We, the jury, having found the defendant guilty of the indicted offense of Aggravated Sexual Assault of a Child assess his punishment at confinement in the Texas Department of Criminal Justice, Institutional Division, for _____ years and assess a fine of \$ _____ in addition to such imprisonment.

PRESIDING JUROR

No. 5 We, the jury, having found the defendant guilty of the indicted offense of Aggravated Sexual Assault of a Child assess his punishment at confinement in the Texas Department of Criminal Justice, Institutional Division, for _____ years, and we further find that the defendant has never before been convicted of a felony in this or any other state, and we recommend to the Court that the imposition of the sentence against the defendant be suspended, and that the defendant be placed on community supervision as provided by the Community Supervision law of the State of Texas.

PRESIDING JUROR

No. 6 We, the jury, having found the defendant guilty of the indicted offense of Aggravated Sexual Assault of a Child assess his punishment at confinement in the Texas Department of Criminal Justice, Institutional Division, for _____ years, and assess a fine of \$ _____ in addition to such imprisonment, and we further find that the defendant has never before been convicted of a felony in this or any other state, and we recommend to the Court that the imposition of the sentence against the defendant as to imprisonment and fine be suspended, and that the defendant be placed on community supervision as provided by the Community Supervision law of the State of Texas.

PRESIDING JUROR

No. 7 We, the jury, having found the defendant guilty of the indicted offense of Aggravated Sexual Assault of a Child assess his punishment at confinement in the Texas Department of Criminal Justice, Institutional Division, for _____ years, and we further find that the defendant has never before been convicted of a felony in this or any other state, and we recommend to the Court that the imposition of the sentence against the defendant as to imprisonment be suspended, and that the defendant be placed on community supervision as provided by the Community Supervision law of the State of Texas, and assess a fine of \$ _____ in addition to such imprisonment.

PRESIDING JUROR